91-1402

Supreme Court, U.S.
FILED
MAR 30 1992
OFFICE OF THE CLERK

NO.: A-531

in the

SUPREME COURT

of the

UNITED STATES

October Term, 1991

EDITH HOROWITZ BROIDA

V.

SAMUEL S. SMITH, ET AL.,

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA

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III. STATEMENT OF THE CASE

This case involves a dispute arising from the administration of the estate of Maurice Horowitz who died on February 25, 1978. Petitioner, Edith Horowitz Broida is the daughter of the decedent and a beneficiary of his estate. Respondent, Samuel S. Smith is the court appointed personal representative of the estate.

The statement of the case made by Petitioner in the present Petition for Writ of Certiorari consists of an incongruous, rambling compilation of misstatements of fact and personal attacks on the judges and parties involved in this case, making it virtually impossible to address them individually. Her derogatory and insulting statements, however, cannot be completely ignored. (Petitioner's brief, p. 5, 13, 14, 17, 19, 20, 21, 23, 26, 27).

In short, Petitioner's brief portrays the entire legal system of the State of Florida (including the Federal courts located therein) as biased, corrupt and ignorant of the law. According to her, the probate, appellate and supreme court judges misapplied the laws of the state and conspired with Respondent to deprive her of her constitutionally guaranteed rights. Fortunately, however, there is no such state of anarchy in Florida. While the falsehood and inappropriateness of her alleged constitutional claims is reviewed in the Argument section of this brief, suffice it to state at this point that this fraud and conspiracy theory is wholly illusory.

In a Final Judgment dated December 8, 1989, the probate court accurately describes the path of litigation leading up to that judgment; a path needlessly

twisted and made difficult by the immense frivolous litigation generated by Petitioner for eleven years. (Petitioner's brief, p. A5 - A10). Nevertheless, the Final Judgment was entered, the estate assets were distributed and a subsequent discharge of the matter was ordered. (Petitioner's brief, p. A10 - A22).

In the December 8, 1989 Final Judgment, the probate court rendered judgment on approximately twenty-five (25) pending motions and petitions, thus determining the amount to be distributed to each party, including Petitioner. Unhappy with that judgment, Petitioner appealed to the Third District Court of Appeal. That court affirmed citing res judicata and lack of reversible error as grounds for its decision. (Petitioner's brief, p. A3, A4). Dissatisfied once again, Petitioner appealed to the

Supreme Court of Florida, which, in exercising its discretion, declined to accept jurisdiction, thereby dismissing the appeal and denying her petition for review. (Petitioner's brief, p. A1, A2).

IV. SUMMARY OF THE ARGUMENT

28 U.S.C. § 1257(a) (amended 1988) empowers this Court to review state court judgments provided that the Federal issue being raised was pressed or passed upon by the state court below. Sup. Ct. R. 10(c) (1989) allows for certiorari review by this Court provided that the state court has decided an important question of Federal law. In the present case, Petitioner fails to show that the Federal issues raised here by Petitioner were properly pressed or passed upon by the state courts below.

Furthermore, Petitioner's petition constitutes an attempt to have this Court re-decide the distribution of estate assets simply because she is dissatisfied with the results obtained after twelve years of state court litigation.

VI. ARGUMENT

THE UNITED STATES SUPREME COURT LACKS JURISDICTION TO DECIDE THE QUESTIONS RAISED BY PETITIONER BECAUSE THE CONSTITUTIONAL CLAIMS RAISED BY PETITIONER ARE FRIVOLOUS AND BECAUSE PETITIONER FAILED TO SHOW THAT THE FEDERAL ISSUES RAISED HERE HAVE BEEN PROPERLY PRESSED OR PASSED UPON BY THE STATE COURTS BELOW.

Petitioner directs her petition for a Writ of Certiorari to the Third District Court of Appeal's decision affirming the Final Judgment of the Probate Court (Petitioner's brief, p.1). However, Petitioner invokes this Court's jurisdiction citing 28 U.S.C. § 1257(3) and Sup. Ct. R. 17(b) and (c). (Petitioners brief, p.1). In responding, Respondent can only assume that Petitioner is referring to 28 U.S.C. § 1257(a) (amended 1988), and to Sup. Ct. R. 10 (1989), which replaced previous Rule 17.

These provisions provide this Court

with the power to review

> . . . [F]inal judgments or decrees rendered by the highest court of a State in which a decision could be had . . . where any title, right, privilege, or immunity is specially set up or claimed under the Constitution . . . or statutes of . . . the United States. 28 U.S.C. § 1257(a) (amended 1988).

Certiorari review, however, is a matter of judicial discretion. Thus, in considering a petition arising from a state court judgment, Certiorari may be granted

> [W]hen a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeal., Sup. Ct. R. 10(b) (1989),
>
> or
>
> [W]hen a state court . . . has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.", Sup. Ct. R. 10(c) (1989).

According to the statute and rules cited above, in order for this Court to have the power to grant certiorari review to a judgment made by a state court, three conditions must be met. First, the judgment must be final. Second, it must be rendered by the highest court of a state in which the decision could be had. Third, the judgment must involve an important Federal question decided by the state court. In this case, the first two conditions have been met but the third has not. This case involved the distribution of assets of an estate and not a Federal, much less a Constitutional, issue.

Sup. Ct. R. 14 (1989) places the burden of establishing the jurisdiction of this Court to review the question(s) presented on Petitioner. An analysis of how this burden was treated by Petitioner

here shows that jurisdiction of this Court has not been established and that Petitioner is attempting to turn this Court into a court of review for every state court judgment, disregarding procedural and subject matter limitations placed on this Court by the Congress.

In her jurisdictional statement, Petitioner states:

> [T]he judgment of the trial court and opinion of the appeal court plus the refusal of the Supreme Court of Florida to accept review are deprivations of petitioner's Federal Constitutional rights as guaranteed by the Fifth Amendment and the Fourteenth Amendment, Title 42, USC, Sec 1983, the Thirteenth Amendment, the Florida Constitution, Art. 1, Sec. 2, 9, 10, Probate Statutes and case law of the State of Florida in conflict with the decision of the Third District Court of Appeals [sic] of Florida and the judgment of the Florida trial probate judge. (Petitioner's brief, p. 1, 2).

Later, in her Statement of the Case, Petitioner, albeit in a very disorganized

and uncoordinated fashion, points to the acts allegedly giving rise to her constitutional claims.

Her Fourteenth Amendment claim would seem to be: the distribution of Estate assets pursuant to the Will rather than to an agreement among family members, which resulted in her receiving a smaller share of the Estate, constitutes an unconstitutional deprivation of property. (Petitioner's brief, p. 3, 20). With all due respect, nothing could be further from the truth. Petitioner was given numerous opportunities to litigate her claims. Her appeals were also heard and denied. Her attempts to remove judges were heard and denied. Her attempts to remove the cases to the Federal courts, and her subsequent efforts to remove Federal judges were heard and denied.

Thus, the dismissal of such challenges, on the Final Judgment, reflects the fact that this issue had been previously addressed by the courts on multiple occasions. Likewise, on appeal, the Third District Court of Appeal cited res judicata as grounds for its decision affirming the Probate court's dismissal. (Petitioner's brief, p. A3, A4).

In light of this course of litigation, the only plausible conclusion is that Petitioner is here trying to revive her challenge to the Will, cloaking her appeal this time under a constitutional guise. Petitioner does not challenge the constitutionality of any state statute. She claims that her injuries stem from decisions constituting ". . . deliberate fraud and deliberate abrogation of protective constitutional and state statutory rights, such decisions

herein made in bias and to benefit persons chosen to be benefited." (Petitioner's brief, p. 23).

While the probate court's decision, just as virtually every decision made by any court, deprives the losing party of property, no one can seriously maintain that due process was not afforded Petitioner. Quite the contrary is true. If anything, this case serves as an example of how a party may abuse the process in order to get what she wants.

Under these circumstances, review by this Court would amount to nothing short of a de novo review of an estate distribution proceedings which were carried out under statutes not being challenged here, and under proper due process. This should not be allowed. Respondent respectfully requests that this Court put an end to this wasteful

and meritless cause.

Petitioner's Fifth Amendment challenge alleges that "The Trial judge censured [Petitioner] for taking appeals and filing suits to establish her property rights." (Petitioner's brief, p. 26). Petitioner does not explain this charge in any detail because it is frivolous. As the probate judge stated, Petitioner has ". . . caused the filing of hundreds of pleadings . . . spawned over forty cases in the various courts . . .", (Petitioner's brief, p. A7), filling a total of eleven volumes.

Thus, Petitioner has far from been deprived of the opportunity to present and litigate her claims. The fact that after eleven years of manipulating and abusing the system she finally lost cannot be considered censorship. Petitioner fails to acknowledge reality;

losing is not pleasant, but it does not mean that the other side, or for that matter, the judges cheated.

Petitioner's Thirteenth Amendment claim is equally meritless. She claims that she was denied of ". . . compensation for eight years of professional work performed as attorney and other professional without grounds . . .". (Petitioner's brief, p. 3). Again, Petitioner ignores the findings of the court and replaces reality with her own self-serving, distorted account of the facts. The truth is that Petitioner was awarded her share of the Estate, reduced by the fines assessed to her as a consequence of her contempt. Furthermore, the probate court stated:

> That although this Court finds that [Petitioner] rendered legal services benefitting this estate through the settlement of the litigation . . . she has

> cost the estate and its beneficiaries fees in excess of any reasonable fee she would have been entitled, through her frivolous litigation thereafter. (Petitioner's brief, p. A19).

This statement alone negates her claim that she was denied of compensation for her work without any grounds. The grounds were plainly stated. The probate court considered her actions to be frivolous, rather than professional. Therefore, once again, Petitioner's real challenge is directed at the reasons underlying the court's determination with respect to her fees: she considers that her services should be recognized because she was right. The probate court, however, explicitly disagreed with her. The appellate court affirmed and the supreme court declined to review the matter.

Parenthetically, Petitioner's actions in this case are not an aberration in an

otherwise unblemished record of professionalism. This Court must be made aware that the pursuit of frivolous claims and personal attacks on lawyers and judges caused her to be suspended from the practice of law by the Supreme Court of Florida in 1991. The Florida Bar v. Broida, 574 So.2d 83 (Fla. 1991).

Petitioner's remaining charges merit only brief comment. Her charges of gender discrimination by the entire judiciary are unfounded. (Petitioner's brief, p. 26). Not surprisingly, she claims that judges, in rendering judgments against her, acted discriminatorily because she is a woman. Again, according to her, the unfavorable result had to have been based on discrimination. It seems Petitioner has considered every imaginable illegal reason for the result, but has not considered that

maybe, just maybe, she was wrong.

Finally, her scandalous accusations of rape, (Petitioner's brief, p. 21) and her comparison of the judicial system of Florida to that of Nazi Germany (Petitioner's brief, p. 5) deserve no comment.

In summary, this Court must recognize Petitioner's misconception of the proper function of our judicial system. This Court's function is not to review judgments of state courts based on naked assertions of inequity; the Bill of Rights does not guarantee people will get what <u>they</u> believe they deserve, much less what <u>they</u> want. The State of Florida determined her rights after proceedings replete with due process, and now Petitioner is unhappy with the result. This alone does not entitle her to review in this Court.

Aside from the grounds mentioned so

far, a purely procedural analysis of Petitioner's Petition reveals a further jurisdictional defect, namely, that since Petitioner fails to show that the constitutional issues raised by Petitioner here were properly raised by her at the probate court or on appeal to the Third District Court of Appeal, U.S.C. § 1257 forbids this Court from reviewing them now.

The judicial interpretation of the jurisdictional limitations placed by Congress on this Court has evolved into the "not pressed or passed upon" in state court rule. This rule was affirmed in State Farm Mutual Automobile Ins. Co. v. Duel, 324 U.S. 154, 160, 65 S.Ct. 573, 576 (1945). In that case the court stated that ". . . [s]ince the [state] Supreme Court did not pass on the question, we may not do so.".

Recently, in Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317 (1983), this Court reaffirmed the rule. There, the Court refrained from reviewing a petition to modify the exclusionary rule deeming that this issue had not been sufficiently raised in the state proceedings below. The Court reviewed the two principles behind the "not pressed or passed upon" below rule. First, it is very likely that the record will be inadequate since it was not compiled with the Federal issues in mind. This principle is very applicable to this case because in her present Petition, Petitioner fails to direct this Court's attention to any point in the record where her Federal claims were properly raised.

The second principle behind the "not pressed or passed upon" below rule, is ". . . due regard for the appropriate

relationship of this court to state courts . . .", McGolderick v. Compagnie Generale Transatlantique, 309 U.S. 430, 434-435, 60 S.Ct. 670, 672-673 (1940). This relationship " . . . demands that [state] courts be given an opportunity to consider the constitutionality of the actions of state officials, and, equally important, proposed changes in existing remedies for unconstitutional actions." Illinois, 103 S.Ct. at 2323. Likewise, here, Petitioner's Petition fails to point out how the Florida probate court, or the Third District Court of Appeal were afforded this opportunity.[1/]

[1/] Neither does this case call for an exception to the rule. See, Three Affil Tribes of Ft. Berthold v. Wold Engine, 476 U.S. 877, 106 S.Ct. 2305 (1986); Chambers v. Mississippi, 410 U.S. 284, 93 S.Ct. 1038 (1973); Taylor v. Illinois, 484 U.S. 400, 108 S.Ct. 646 (1988); New York v. Class, 475 U.S. 106, 106 S.Ct. 960 (1986); U.S. Department of Mental Hygene of Cal. v. Kirchner, 380 U.S. 194, 85 S.Ct. 871 (1965); Orr v. Orr, 440 U.S. 268, 99 S.Ct. 1102 (1979); Parrot v. City of

(Footnote continued on next page.)

In summary, this Court should deny Petitioner's Petition for a Writ of Certiorari because she has not shown that the Federal issues raised by Petitioner here were properly pressed or passed upon by any of the state courts below, and also because the state court

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(Footnote continued from previous page.)
Tallahassee, Florida, 381 U.S. 129, 85 S.Ct. 1322 (1965). In all these cases, there were special circumstances which made an exception necessary. Here Petitioner does not call for an exception, nor do the present circumstances make one necessary. The New York, Mental Hygene and Orr cases relate to what is known as the "plain statement" rule, as formulated in Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469 (1983) which states that unless the state court clearly indicates that it is deciding the case based on state grounds, the U.S. Supreme Court has jurisdiction. The reasoning behind the "plain statement" rule, however is only applicable where there is doubt as to the grounds for the state court's decision. In this case the state court decided the case without any remote reference to any federal grounds. The court of appeal affirmed based on res judicata and lack of reversible error, and the Florida Supreme Court exercised its discretion and declined to hear the appeal.

decision from which Petitioner appeals was reached based on purely state law grounds.

The cases cited by Petitioner in support for this Court's jurisdiction fail to properly address the limitation of this Court's jurisdiction in light of the "not pressed or passed upon" below rule. (Petitioner's brief, p.6, 7.)

In Wood v. Georgia, 450 U.S. 261, 101 S.Ct. 1097 (1981), this Court granted certiorari to review a state court decision based on a conflict of interest question giving rise to a due process challenge, even though the Federal question was not raised during the state court's proceedings. Nevertheless, the facts and circumstances of that case are clearly distinguishable from the present case. In Wood, the principal fact supporting the exercise

of this Court's certiorari jurisdiction was that petitioner's attorney there was the one charged with the conflict of interest. Wood, 101 S.Ct. at 1100. Accordingly, it was unlikely that the attorney himself would raise the conflict of interest issue. Furthermore, evidence in the record showed that the conflict of interest issue had been raised at trial. Id., 101 S.Ct. at 1100.[2/]

In the present case there was nothing preventing Petitioner from properly raising any of her Federal

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2/ Moreover, neither that case's reliance on 28 U.S.C. § 2106, nor Vachon v. New Hampshire, 414 U.S. 478, 94 S.Ct. 664 (1974) (cited in support of Wood) reflect the adherence to the 28 U.S.C. § 1257 jurisdictional limitations followed today. As Justice Rehnquist stated in his dissent in Vachon, other provisions do not ". . . give this Court the power to simply ignore the limitations placed by 28 U.S.C. § 1257 . . ." Vachon, 94 S.Ct. at 667.

claims during the state court proceedings. Furthermore, again, Petitioner fails to direct this Court's attention to any point in the record where her Federal claims were properly raised.

The next six cases cited by Petitioner in support of this Court's certiorari jurisdiction not only fail to support Petitioner's argument, they defeat it. All six cases explicitly adhere to the principles of the "not pressed or passed upon" below rule. See Thompson v. City of Louisville, 362 U.S. 199, 80 S.Ct. 624 (1960) (14th Amendment due process challenge was raised at trial); Garner v. Louisiana, 368 U.S. 157, 82 S.Ct. 248 (1961) (Federal questions were properly raised and preserved throughout the proceedings); Stone v. Powell, 428 U.S. 465, 96 S.Ct. 3037 (1976) (where the state has

provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted Federal habeas corpus relief on Fourth Amendment grounds); John v. Paullin, 231 U.S. 583, 34 S.Ct. 178 (1913) (appeal dismissed for want of jurisdiction; no Federal questions were raised and there was no state proceeding ruling on Federal questions); Robb v. Conelly, 111 U.S. 624, 4 S.Ct. 544 (1883) (privileges and immunities claim was raised in state proceedings); Irvin v. Dowd, 359 U.S. 394, 79 S.Ct. 825 (1959) (constitutionally based objections were pursued throughout state proceedings).

Finally, Petitioner's statement that the Federal issues were raised below in her Notice of Appeal to the Florida Supreme Court (Petitioner's brief, p.2) is insufficient to establish this Court's

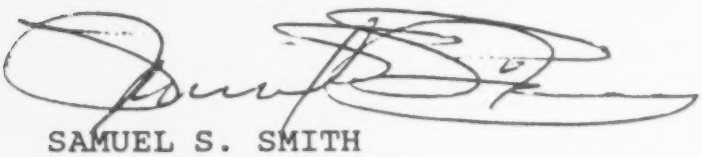
jurisdiction. The Federal issues had to have been properly raised at the probate or appellate courts. Sanford v. Rubin, 237 So.2d 134 (Fla. 1970), Brown v. Massachussetts, 144 U.S. 573, 12 S.Ct. 757 (1892).

In conclusion, since Petitioner has not shown that the Federal issues raised here were properly pressed or passed upon by the state courts below, and since the facts of this case do not present any circumstances which may give rise to exceptions to this Court's jurisdictional limitations, Petitioner's Petition for a Writ of Certiorari must be denied. This petition consists of than a repetition of issues that were decided, appealed and affirmed by the state courts. Petitioner is unhappy with the estate distribution, and incorrectly sees this court's function as a new forum for her contentions.

VII. CONCLUSION

For all the reasons mentioned above, Respondent respectfully requests that this Court deny Petitioner's Petition for a Writ of Certiorari.

Respectfully submitted,



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